

# NEWS AND VIEWS

FROM THE LAW FIRM OF

## LIPSITZ & PONTERIO, LLC

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**ASBESTOS AND  
OCCUPATIONAL DISEASE**

**LEAD DISEASE  
CASES**

**AUTOMOBILE  
ACCIDENTS**

**CONSTRUCTION  
ACCIDENTS**

**SOCIAL SECURITY  
DISABILITY**

**MEDICAL  
MALPRACTICE**

**WORKERS'  
COMPENSATION**

**FIRE LOSS  
CLAIMS**

**SUMMER 2002**

### **Western New York Suffers From Childhood Lead Poisoning**

For nearly 100 years, pediatricians and child welfare workers have studied and documented cases of childhood lead poisoning. These cases occur wherever young children, usually six and under, live and play in environments contaminated by flaking and peeling lead based paint. This is a huge public health problem, especially in old urban centers such as Buffalo, the City of Tonawanda, and Niagara Falls, where most homes were built before 1978 when lead paint was used on interior and exterior surfaces. Although lead paint is no longer in use, it presents a serious hazard when newer layers of paint peel or flake.

As any parent knows, toddlers and even children in kindergarten and beyond will play on the floor, often near windows or doors, where the action of constant opening and closing causes old lead paint to be exposed and to become available for swallowing. Even a house with intact painted surfaces that is safe

today may present a hazard a year from now, especially in high traffic areas. And, when a child places her hands or toys in her mouth, one chip of heavily leaded paint can enter the child's digestive system and cause the child to suffer both the immediate and long term effects of lead poisoning. Lead paint chips are sweet and children will suck on the chips and swallow them. At the age of two or three or even six, this relatively small amount of lead can cause serious poisoning, at times requiring hospitalization.

What is the solution? And who is responsible for finding a solution? Our courts have recently emphasized the landlord's responsibility, especially when he is aware that children are living in his rental units and he has the right to enter and make repairs. Flaking and peeling paint should be removed carefully so as not to cause lead dust to spread throughout the living area, and surfaces should then be sealed with lead-free coatings. Although landlords and homeowners may not be able to make their homes lead-free, they can make them safe for children.

If your child is found to have a lead reading in his or her bloodstream of 20 or higher, please call Lipsitz & Ponterio, LLC to discuss your potential legal rights. In an effort to spread the word about lead poisoning and what can be done to stop the conditions that cause it, Lipsitz & Ponterio, LLC has and will continue to use newspapers and television to advertise our services. We believe this is a responsible use of lawyer advertising since it brings to vulnerable people a message that help is available. Many families have lived for years with children severely disabled as a result of lead poisoning and they can and should take steps to hold irresponsible landlords accountable.

### **New Lawyers Hired**

We are pleased to announce that attorneys Amy LaMendola and Kathleen A. Burr have joined our firm.

Ms. LaMendola, is a 1999 honors graduate of the University of Cincinnati College of Law and in June 2001 obtained a degree in Intellectual Property Law from The Benjamin N. Cardozo School of Law.

Ms. LaMendola is often on the road representing our clients in asbestos disease cases in Rochester, New York. When she is in the office, Ms. LaMendola does in depth research into legal issues and writes briefs. A lawyer dedicated to her clients, Ms. LaMendola is often in the office late at night and on the weekends. In addition to her work on asbestos disease cases, Ms. LaMendola has done extensive research in the areas of automobile negligence, medical malpractice and industrial accidents.

Kathleen A. Burr, a 1990 honors graduate of the State University of New York at Buffalo School of Law, joins the firm in August 2002.

Ms. Burr has practiced law for twelve years in a large Buffalo law firm where she gained extensive experience in the preparation and trial of personal injury cases, including childhood lead disease cases. Before entering law school, Ms. Burr was a news reporter for a local radio station.

It is with a mixture of sadness and joy that we announce Nan Haynes' departure from Lipsitz & Ponterio this August. Nan has assumed a teaching position on the faculty of the Buffalo Law School. Although she will be teaching full time during the academic year, we anticipate that Nan will continue to provide professional counsel and advice to Lipsitz & Ponterio and represent clients of the office as her time permits. Nan has been very instrumental in developing our childhood lead disease cases. We anticipate that Kathy Burr will continue that work into the future.

We are also pleased to announce that we have recently hired John Pullano, a licenced Workers' compensation representative. John obtained his license by passing a complex and rigorous examination on the laws and rules governing proceedings at the Workers' Compensation Board. He will

handle Workers' compensation hearings for the office, including testimony taken from widows in occupational disease and death cases, the submission of medical reports and numerous other matters.

## **Operations Consolidated in Buffalo Office**

We wish to announce to our clients that we have closed our office in Niagara Falls. This will have no impact on the representation which we provide to our clients in Niagara County. Although we have closed our Niagara Falls office, we continue to attract more and more clients from Niagara County, and we have jury trials on the schedule in Niagara Falls. As always, we are prepared to handle matters in Niagara County and to meet with clients in their homes. The closing of our office in Niagara Falls was a business decision based on our belief that we will be able to provide equally effective representation by consolidating all of our operations in Buffalo.

## **Asbestos Litigation Enters a New Phase**

When Clarence Borel filed a law suit in Texas in 1969, he was the first person suffering from asbestosis and mesothelioma to place his case before a jury in the United States of America. The Borel case established the principal that manufacturers of asbestos-containing products have a duty to warn about the dangers of those products.

Shortly after the Borel case, the Occupational Safety & Health Administration began regulating exposure to asbestos, and in 1972 effectively outlawed the use of asbestos-containing insulation

material in the construction industry.

In 1982 the Johns-Manville Corporation and related companies filed for bankruptcy reorganization. This move effectively took Johns-Manville out of the nationwide asbestos litigation and created additional pressure on other asbestos defendants. Including the Johns-Manville Corporation, about fifty companies have filed for bankruptcy protection during the last twenty years, claiming as a cause the anticipated costs of asbestos lawsuits. Of these companies, approximately fourteen have filed for bankruptcy within the past two years. These developments have prompted public discussion among the victims of asbestos disease, asbestos companies, and lawyers and judges over the appropriateness of pursuing claims for asbestos-related disease by individuals who are otherwise healthy and able to go about their normal daily routines. Lately, our courts have become less receptive to such cases.

Since many of the companies that had traditionally settled asbestos disease cases are now in bankruptcy, victims of asbestos induced lung cancer, mesothelioma and severe asbestosis must now identify new potentially responsible parties in order to achieve just compensation from the legal system.

In light of these circumstances, we expect that our system will now give even more attention to workers suffering from lung cancer and mesothelioma.

The lawyers at Lipsitz & Ponterio continue to devote time and energy to investigating the role played by local asbestos distribution companies such as Niagara Insulations, Inc., Frontier Insulation Contractors, Inc. and Insulation Distributors, Inc. in negligently

exposing Western New York workers to asbestos dust. Since the manufacturers of asbestos-containing materials have now entered bankruptcy, we are focusing our investigation on the degree of knowledge that the local distributors had concerning the hazards of the products that they sold to worksites throughout Western New York.

## Local Asbestos Contractor and Distributor Pay Substantial Awards

Because of the bankruptcy of so many manufacturers and producers of asbestos products, we have turned our attention toward the responsibility of companies which engaged in selling and installing asbestos products. Now, two of our clients have received substantial awards from three such companies. All are locally owned.

In June 2002, a Niagara County jury awarded Terry Adamec, a former Carbide Graphite employee, nearly two million dollars. The jury found two local distributors of asbestos insulation products responsible for Mr. Adamec's injuries: Buffalo Insulation Distributors for 40% and Niagara Insulation Distributors for 10%.

Mr. Adamec was represented at trial by Michael A. Ponterio and John P. Comerford.

Mr. Adamec was employed until 1999 when the doctors told him he could no longer work because of severe shortness of breath. Two years later, he was diagnosed with lung cancer due to workplace exposure to asbestos. Buffalo Insulation Distributors, Inc. and Niagara Insulations, Inc. sold asbestos materials to Carbide Graphite.

The verdict was the first in Western New York against

distributors of asbestos insulation products. The jury rejected the companies' argument that the asbestos industry should bear no responsibility, even though the distributors knew the products they sold could cause disease and death.

Earlier this year, the widow of a Local 41 electrician received a substantial settlement from a local spray and plastering contractor after a two week trial. Her husband had died at age 58 as a result of malignant mesothelioma. Michael A. Ponterio and John P. Comerford were able to show the jury the company knew about the hazards of asbestos, but took no precautions to prevent exposure to workers.

## Mesothelioma Tide Rising Among Durez Workers

The Durez facility in North Tonawanda was a chemical and plastics factory which manufactured and produced plastic molding compound containing raw asbestos fibers as a filler. Durez was also heavily insulated with asbestos-containing insulation material. Former Durez workers describe the yards and alley-ways between the manufacturing buildings as being covered with asbestos dust.. Asbestos dust flew all over the vicinity of the buildings where asbestos was used as a raw material, contaminating the workers in the buildings and anyone working in the outside areas. It was often so dusty inside of the buildings that it was difficult to see across the interior of the production units. According to many workers interviewed about the conditions of the plant, some days the asbestos dust would come down from roof top dust collectors and windows in the manufacturing buildings just like snow.

Air currents carry asbestos dust wide distances. According to

industrial hygiene studies, concentrations of asbestos fibers have been detected in the air as far as one-half mile from a construction site.

The best measure of exposure to asbestos in a given population is the prevalence of asbestos-related X-ray abnormalities among workers as well as the number of confirmed cases of mesothelioma.

Occidental Chemical Corporation, the company which owned the Durez facility in North Tonawanda, has been running a medical screening program since 1986 for Durez workers who were exposed to asbestos in the 1970s and earlier. This screening program has detected X-ray abnormalities in a large percentage of the workers. Tragically, the number of documented mesothelioma cases arising from exposure at Durez has been rising at an alarming rate. As of 1992, nine cases of mesothelioma had been discovered, with the first case showing up in 1980. As of the beginning of 2000, there were approximately thirty-three confirmed cases of mesothelioma, and now the total is closer to forty.

The medical screening program run by Occidental Chemical Corporation is open to workers and their spouses. If you were married to a Durez worker exposed to asbestos at the plant at any time prior to 1979, you should consider contacting the Occidental medical scheduling office on 25 Falconer Street in North Tonawanda to arrange for an immediate screening.

If you are already enrolled in the program, you should take full advantage of it.

The program includes a regular physical exam, breathing tests, and X-ray or CT of the chest and lungs. (The program is not currently open to the children of the workers, even if they helped to do the family laundry. If you believe that your

children were exposed in this manner, your family doctor or health maintenance organization can make a referral to a lung specialist).

The increasing number of mesothelioma cases among the Durez work force is a matter of concern for all Durez workers and their families. As the numbers go up, it is also a matter of concern for neighborhood residents. The plant continued to use raw asbestos in the manufacturing process through the end of 1978. Neighborhood residents have reported that they recall seeing fields outside of the plant contaminated with dust, including Ramsey Field where little league activities were conducted in the 1960s and 1970s.

If you lived near the Durez facility any time before 1979, you may be at risk. You should consider sharing this information with your doctor.

## Household Exposure Case Settled

Our client Jean was followed by the Occidental screening program and by her own doctors. In 1998, she was diagnosed with lung cancer and underwent extensive surgery for the removal of a portion of her lung. The diagnosis and treatment caused a major disruption in her life.

Jean is married to a former worker of the Durez facility in North Tonawanda. Jean did not know it but she was being exposed to asbestos while doing her laundry because the dust on her husband's work clothes contained asbestos fibers.

That asbestos contributed to the development of her lung cancer.

Lipsitz & Ponterio pursued a claim on behalf of Jean and her family. Her case was scheduled

for trial earlier this year. Fortunately, we were able to negotiate a considerable cash settlement prior to trial, and we are happy to report that Jean has had no recurrence since her surgery and has returned to work.

## Accident Victim Receives Substantial Award for Disabling Injuries

Our office represented a security guard who suffered multiple fractures to both of her legs when the van she was riding in was hit by an NFT Metro bus. As a result of her injuries, this 49 year old mother is permanently and totally disabled.

After a week-long trial in Federal Court in Buffalo, our client received a substantial cash settlement.

## Corporate Fraud in the Workplace

Lately, we have all been reading stories in the newspaper of one corporate financial scandal after another. CEOs of some major corporations have routinely inflated profits and hidden losses in order to increase their own annual compensation packages. Other CEOs have treated corporate funds like personal bank accounts. Retirees have seen their pension funds dwindle, and investors who relied upon corporate earning statements have lost hundreds of millions of dollars. Clearly, corporate fraud is an ongoing problem in our country. Even worse, corporate fraud is not confined to financial scandals but extends to matters of health and safety on the factory floor.

Lipsitz & Ponterio represents three workers with disabling lung disease caused by workplace exposure to beryllium, a metal used in the manufacture of a wide variety of

products, including weapons, electronics, and dental products. We are pursuing claims against companies that supplied and distributed beryllium to a Buffalo based business, Williams Advanced Materials, Inc. where our clients worked for over twenty years. The lawsuit against one of the distributors of beryllium, Brush Wellman, Inc. of Cleveland, Ohio, includes a claim that this company deliberately misled workers about the health effects of exposure to beryllium dust and fumes.

For over fifty years, Brush Wellman has been one of the world's largest producers and sellers of beryllium containing alloys. Through an intensive investigation of the internal files of this corporation, we have learned that dozens of Brush's own employees have developed chronic beryllium disease over the years. This is a shocking fact because Brush Wellman always held itself out as a leader, not only in the sale of beryllium containing materials but also in the field of industrial hygiene relating to beryllium exposure. Throughout its history, Brush Wellman has claimed that it maintained its own facilities in accordance with established exposure limits for beryllium dust and fumes. It has continually told workers that if they keep exposure below established limits that they will be able to work safely with beryllium alloys. In fact, Brush Wellman engaged in a lengthy campaign of dis-information about the safety of beryllium and beryllium containing alloys. This campaign has created a false sense of security among workers exposed to beryllium dust and fumes. In their lawsuit, our clients contend that Brush Wellman, through its president and other high ranking officers, intended to deceive workers by stating publicly that the company knew of no scientific evidence that exposure to beryllium

below established limits would be hazardous. However, all along Brush Wellman's own employees were developing chronic beryllium disease at exposures no greater than the established limits. It is our contention that Brush Wellman misrepresented the safety of beryllium because the company knew that if the truth came out, workers would choose not to work with beryllium, and this would have a negative impact on the profitable sale of beryllium.

Sadly, some corporations make money by engaging in financial frauds, while others preserve profits by sacrificing the health of workers.

Our investigation into Brush Wellman will continue into the next year.

## Long Term Care

If you or a loved one suffer a physical or mental disability, then emotional distress, economic hardship and loss of control can become realities without proper planning. The right to control and protect your assets and preserve your dignity to the fullest extent possible is one of the major benefits of advance planning.

The prohibitive cost of long term care has intensified. You need to understand your current health insurance coverage. At this most difficult time in your life you will be forced to make decisions which involve your life savings and your assets, including your home. Long Term Care Insurance is available for purchase, but the choices and options can be overwhelming and expensive.

Medicaid can play an important role in the payment for long term care, but there are restrictive

eligibility requirements. You need to understand the 36 month look-back period, the transfer of assets penalty and exceptions to the penalty, the community spouse's income and resource allowances and the application process.

Our office works closely with Henry D. Gartner, an attorney who concentrates in the areas of wills and estates, and he can assist you in developing sound strategies to meet your financial, health and family needs.

## Testimonials

I wish to thank everyone again for all they did for Bob and myself. Mr. Ponterio, Mr. Comerford, Mr. Lipsitz, Mr. Gartner. It was very difficult when Bob was so ill. Everyone was very kind and understanding.

Thank you.

*Lucille Burka*

Dear Mr. Lipsitz:

I want to take this opportunity to thank you and your kind staff for the wonderful job you have done for me and my grandson Alex.

I sometimes find it overwhelming to be starting over in a new home. I do know that Daniel will always be present in my heart and soul. Daniel always told me this: "Barbara, you are to keep in touch with John Lipsitz. He will be there to help you and he truly cares about people. He is the man to talk to".

Mr. Lipsitz, I cannot begin to tell you how very grateful I am. I now can move to a location that Daniel wanted me to be at. Mr. Lipsitz, once again, I thank you from the bottom of my heart.

*Mrs. Barbara Krull*

Dear Mr. Lipsitz:

I want to "Thank You" for taking my case and always keeping me informed. I was always pleased to get your calls and up dates concerning my case.

Your office staff were very courteous and always well informed. My calls were returned. Thank you for your perseverance on my behalf.

It has made a great difference in my life. I am able to look to the future with the realization I can have a good life and I am able to help my family in many ways. I am sure my husband has looked down at us and said "My pain and suffering has all been worthwhile and I have taken care of my family".

Sincerely,

*Rolla R. Becker*

## In Memoriam

We would like to express our condolences to the families of our recently deceased clients:

### 2001

Herman Baisch .....	March 15
Robert Burka .....	June 28
Paul Turecki .....	October 10
James Bil .....	October 18
Gerald Kramarczyk...	November 22
Marie Gram .....	November 23

### 2002

Norman Emerson.....	January 4
Eugene Mirabella .....	February 28
Bernard Wilson .....	March 9
Donald Setter .....	May 14
Ronald G. Birtha .....	May 17
Richard Piechowicz .....	June 11
Robert Krieger .....	June 14
Ray Bennetti .....	June 22
John Bauer.....	August 4

## LIPSITZ & PONTERIO L.L.C. ATTORNEYS AT LAW

### Firm Philosophy

We concentrate on the representation of workers subjected to unsafe and hazardous working conditions, as well as consumers harmed by defective products. We have over twenty years of experience representing workers injured as a result of conditions of their employment, including exposure to asbestos and other toxic substances.

Since the mid-1980's, John Lipsitz and Michael Ponterio have worked closely with labor organizations in Western New York. Our practice of law is built upon a foundation of service, dedicated to the interests of workers and the unions that represent them, and we are committed to representing the interests of people who have been injured as a result of the negligence of others.

We formed the law firm of Lipsitz & Ponterio, LLC in order to provide our clients with prompt and personal service. We are aware of the serious nature of asbestos-related diseases and want to make sure that those who have been injured through exposure to asbestos receive the compensation they are entitled to as swiftly as it can possibly be obtained.

Our staff is dedicated and knowledgeable. Personal injury litigation can be complicated and difficult to understand, and this is especially true in the area of asbestos litigation which involves many manufacturers and events that took place a long time ago. You can count on us to answer your questions and represent you in your case from start to finish. This includes advice and representation concerning your valuable rights under the New York State Workers' Compensation Law.